

CHAPTER 115C

PETROLEUM TANK RELEASE CLEANUP ACT

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115C.02 DEFINITIONS.

[For text of subds 1 to 5, see M.S.1988]

Subd. 6. **Account.** "Account" means the petroleum tank release cleanup account in the environmental fund.

[For text of subds 7 to 14, see M.S.1988]

History: 1989 c 335 art 4 s 44

115C.03 RESPONSE TO RELEASES.

[For text of subds 1 to 8, see M.S.1988]

Subd. 9. **Requests for review, investigation, and oversight.** (a) The commissioner may, upon request:

- (1) assist in determining whether a release has occurred; and
- (2) assist in or supervise the development and implementation of reasonable and necessary response actions.

(b) Assistance may include review of agency records and files and review and approval of a requester's investigation plans and reports and corrective action plans and implementation.

(c) The person requesting assistance under this subdivision shall pay the agency for the agency's cost, as determined by the commissioner, of providing assistance. Money received by the agency for assistance under this subdivision must be deposited in the state treasury and credited to the fund.

History: 1989 c 226 s 1

115C.08 PETROLEUM TANK RELEASE CLEANUP ACCOUNT.

Subdivision 1. **Revenue sources.** Revenue from the following sources must be deposited in the state treasury and credited to a petroleum tank release cleanup account in the environmental fund in the state treasury:

- (1) the proceeds of the fee imposed by subdivision 3;
- (2) money recovered by the state under sections 115C.04, 115C.05, and 116.491, including administrative expenses, civil penalties, and money paid under an agreement, stipulation, or settlement;
- (3) interest attributable to investment of money in the account;
- (4) money received by the board and agency in the form of gifts, grants other than federal grants, reimbursements, or appropriations from any source intended to be used for the purposes of the account; and
- (5) fees charged for the operation of the tank installer certification program established under section 116.491.

[For text of subd 2, see M.S.1988]

Subd. 3. **Petroleum tank release cleanup fee.** A petroleum tank release cleanup fee is imposed on the use of tanks that contain petroleum products subject to the inspection

fee charged in section 239.78. The fee must be collected in the manner provided in sections 239.78 and 296.14. The fee must be imposed as required under subdivision 3, at a rate of \$10 per 1,000 gallons of petroleum products as defined in section 296.01, subdivision 2, rounded to the nearest 1,000 gallons. A distributor who fails to pay the fee imposed under this section is subject to the penalties provided in section 296.15.

Subd. 4. Expenditures. Money in the fund may only be spent:

(1) to administer the petroleum tank release cleanup program established in sections 115C.03 to 115C.10;

(2) for agency administrative costs under sections 116.46 to 116.50, sections 115C.03 to 115C.06, and costs of corrective action taken by the agency under section 115C.03, including investigations;

(3) for costs of recovering expenses of corrective actions under section 115C.04;

(4) for training, certification, and rulemaking under sections 116.46 to 116.50;

(5) for agency administrative costs of enforcing rules governing the construction, installation, operation, and closure of aboveground and underground petroleum storage tanks; and

(6) for reimbursement of the harmful substance compensation fund under sections 115B.26, subdivision 4; and 115C.08, subdivision 5.

Subd. 5. Fund transfer. The board shall authorize the commissioner of finance to transfer to the harmful substance compensation fund the amount requested by the harmful substance compensation board under section 115B.26, subdivision 4. Transfer of the amount must be made at the earliest practical date after authorization by the board. If the unexpended balance in the fund is less than \$1,000,000 the transfer must be made at the earliest practical date after the unexpended balance in the fund exceeds that amount.

History: 1989 c 209 art 1 s 10; 1989 c 226 s 2; 1989 c 325 s 46,47; 1989 c 335 art 4 s 45

115C.09 REIMBURSEMENT TO RESPONSIBLE AND OTHER PERSONS.

Subdivision 1. Reimbursable costs. (a) The board shall provide partial reimbursement to eligible responsible persons for reimbursable costs incurred after June 4, 1987.

(b) The following costs shall be considered reimbursable for purposes of this section:

(1) corrective action costs incurred by the responsible person; and

(2) costs that the responsible person is legally obligated to pay as damages to third parties for bodily injury or property damage caused by a release if the responsible person's liability for the costs has been established by a court order or a consent decree.

(c) A cost for liability to a third party is considered to be incurred by the responsible person when an order or consent decree establishing the liability is entered. Except as provided in this paragraph, reimbursement may not be made for costs of liability to third parties until all eligible corrective action costs have been reimbursed. If a corrective action is expected to continue in operation for more than one year after it has been fully constructed or installed, the board may estimate the future expense of completing the corrective action and, after subtracting this estimate from the total reimbursement available under subdivision 3, reimburse the costs for liability to third parties. The total reimbursement may not exceed the limit set forth in subdivision 3.

Subd. 2. Responsible person eligibility. (a) A responsible person who has incurred reimbursable costs after June 4, 1987, in response to a release, may apply to the board for partial reimbursement under subdivision 3 and rules adopted by the board. The board may consider applications for reimbursement after the commissioner has approved a design for corrective action that the commissioner determines will adequately address the release. The board may also consider applications when the corrective action has been fully constructed or installed and periodically afterward as the corrective action continues operation.

(b) A reimbursement may not be made unless the board determines that the commissioner has determined that the corrective action has, or when completed will have, adequately addressed the release in terms of public health, welfare, and the environment.

(c) The board shall reduce the amount of reimbursement to be made under this section if it finds that the responsible person has not complied with one or more of the following requirements:

(1) at the time of the release the tank was in substantial compliance with state and federal rules and regulations applicable to the tank, including rules or regulations relating to financial responsibility;

(2) the agency was given notice of the release as required by section 115.061;

(3) the responsible person, to the extent possible, fully cooperated with the agency in responding to the release; and

(4) if the responsible person is an operator, the person exercised due care with regard to operation of the tank, including maintaining inventory control procedures.

(d) The reimbursement shall be reduced as much as 100 percent for failure by the responsible person to comply with the requirements in paragraph (c), clauses (1) to (4). In determining the amount of the reimbursement reduction, the board shall consider:

(1) the likely environmental impact of the noncompliance;

(2) whether the noncompliance was negligent, knowing, or willful;

(3) the deterrent effect of the award reduction on other tank owners and operators; and

(4) the amount of reimbursement reduction recommended by the commissioner.

Subd. 3. Reimbursement. (a) The board shall reimburse a responsible person who is eligible under subdivision 2 from the fund for 90 percent of the portion of the total reimbursable costs less than \$250,000. Not more than \$250,000 may be reimbursed for costs associated with a single release, regardless of the number of persons eligible for reimbursement.

(b) A reimbursement may not be made from the fund under this subdivision until the board has determined that the costs for which reimbursement is requested were actually incurred and were reasonable.

(c) Money in the fund is appropriated to the board to make reimbursements under this section.

Subd. 3a. Eligibility of other persons. Notwithstanding the provisions of subdivisions 1 to 3, the board shall provide full reimbursement to a person who has taken corrective action if the board determines that:

(1) the person took the corrective action in response to a request or order of the commissioner made under this chapter;

(2) the commissioner has determined that the person was not a responsible person under section 115C.02; and

(3) the costs for which reimbursement is requested were actually incurred and were reasonable.

Subd. 3b. Volunteer eligibility. (a) Notwithstanding subdivisions 1 to 3, a person may apply to the board for partial reimbursement under subdivision 3 who:

(1) is not a responsible person under section 115C.02;

(2) holds legal or equitable title to the property where a release occurred; and

(3) incurs reimbursable costs on or after May 23, 1989.

(b) A person eligible for reimbursement under this subdivision must, to the maximum extent possible, comply with the same conditions and requirements of reimbursement as those imposed by this section on a responsible person.

(c) The board may reduce the reimbursement to a person eligible under this subdivision if the person acquired legal or equitable title to the property from a responsible person who failed to comply with the provisions of subdivision 2, paragraph (c).

Subd. 4. Reimbursement does not affect other liability. The right to apply for reimbursement and the receipt of reimbursement does not limit the liability of a responsible person for damages or costs incurred by a person or the state as a result of a release.

Subd. 5. Return of reimbursement. (a) The board may demand the complete or partial return of any reimbursement made under this section if the responsible person:

(1) misrepresents or omits a fact relevant to a determination made by the board or the commissioner under this section; or

(2) fails to complete corrective action that the commissioner determined at the time of the reimbursement to be necessary to adequately address the release.

(b) If a reimbursement under this subdivision is not returned upon demand by the board, the board may recover the reimbursement, with administrative and legal expenses, in a civil action in district court brought by the attorney general against the responsible person. If the board's demand for return of the reimbursement is based on willful actions of the responsible person, the responsible person shall also forfeit and pay to the state a civil penalty, in an amount to be determined by the court, of not more than the full amount of the reimbursement.

History: 1989 c 226 s 3